



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT  
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. §§ 6005 and 7714

**Order No. 2009-A-0011**

*PERSONALLY SERVED BY AN ENVIRONMENTAL  
ENFORCEMENT OFFICER*

**Issued To:**

Baltimore Aircoil Company  
Attn: Gregory Lowman, Plant Manager  
1162 Holly Hill Road  
Milford, Delaware 19963

**Registered Agent:**

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801

Dear Mr. Lowman:

This is to notify Baltimore Aircoil Company ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 Del. C. Chapters 60 and 77, 7 DE Admin. Code 1102 and 7 DE Admin. Code 1201. Accordingly, the Department is issuing a Notice of Administrative Penalty Assessment, pursuant to 7 Del. C. §§ 6005(b)(3) and 7714(b).

**BACKGROUND**

Respondent owns and operates a facility located at 1162 Holly Hill Road in Milford, Delaware ("facility") that makes air handling systems and heat exchangers. Respondent uses propane for its heating processes and fueling fork trucks and subsequently has owned and operated a 30,000 gallon propane storage tank ("tank") at its facility since approximately 1978. The quantity of propane the tank can hold subjects Respondent to the requirements of 7 Del. C. Chapter 77 and 7 DE Admin Code 1201. In addition the tank is required to meet National Fire Protection Association Code requirements enforced by the State Fire Marshal.

On the morning of July 31, 2008, Respondent received delivery of propane to the tank resulting in it being approximately 75% full with 22,500 gallons of propane. Soon after, Respondent discovered a leak from a crack in a vapor line pipe joint at the bottom of the tank which could not be isolated with valves. Respondent reported the leak to the Department at

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9:35 am. The potential fire hazard from the leak necessitated response from local and state emergency responders who facilitated the removal of the propane from the tank to mitigate the fire hazard. This was accomplished by pumping out 21,148 gallons of propane into three propane transport trucks. The remaining 1,352 gallons of propane was released to the environment via the leak itself as well as controlled flaring. The entire process was completed on August 1, 2008 and took approximately 18 hours.

On August 4, 2008, the Department conducted a follow up inspection and discovered that the tank had been located at Respondent's facility for approximately 30 years. Subsequent state laws required Respondent to submit a Risk Management Plan which would have included registering the tank with the Department which it never did. In addition since 1992, Respondent was subject to but never paid an annual fee of \$500.

During the August 4<sup>th</sup> inspection, the Department observed that the tank supports had settled and the vapor line was bowed. The resulting stress on the line could have been a contributing factor in the development of the crack in the vapor line. While the tank had been onsite for approximately 30 years, it had been moved to its current location in 2003. Respondent's incident report submitted August 5, 2008, indicates that due to softening of the ground under the propane tank, it shifted on its foundation during the July 31, 2008 delivery of propane which in turn caused the plumbed fitting under the tank to crack.

For safety purposes, the propane tank was equipped with two liquid and one vapor line emergency shutoff valves which are designed to be operated by cable. During its inspection, the Department observed that the shutoff cables were missing and the emergency shutoff valves had been wired to remain in a constant open position, thus rendering these safety features inoperable. State law imposes a "general duty" to operate and maintain a safe facility, including taking steps to prevent releases and minimize the consequences when they do occur, on those in control or associated with hazardous substances. By tampering with the tank's safety equipment, Respondent failed to meet that obligation.

A concurrent investigation by the State Fire Marshal's office found that the tank and its associated valves and piping failed to meet minimum NFPA Code requirements. It prohibited Respondent from using the tank again unless it obtained the State Fire Marshal's approval. The Department agreed with this directive and included said approval in a list of actions it would require before Respondent could place the tank back in service. Respondent has since decided to switch fuels for its heating processes from propane to natural gas. Smaller propane tanks would be installed to fuel fork trucks and as backup gas. These changes would result in Respondent no longer being subject to the Department's Accidental Release Prevention Regulation.

A Notice of Violation was issued August 11, 2008.

### ***FINDINGS OF FACT***

1. Respondent has owned and operated a 30,000 gallon propane tank at its facility located at 1162 Holly Hill Road in Milford, Delaware since at least 1978.



2. The quantity of propane meets the definition of an extremely hazardous substance ("EHS") and therefore subjects Respondent to the requirements of 7 Del. C. Chapter 77.
3. The quantity of propane meets the definition of a regulated substance and therefore subjects Respondent to the requirements of 7 DE Admin. Code 1201.
4. Beginning on July 31, 2008, Respondent experienced a propane leak from its 30,000 gallon propane tank shortly after delivery of propane that brought the tank level to 22, 500 gallons of propane.
5. State and local emergency responders facilitated the removal of propane from the tank by pumping out 21,148 gallons and the remaining 1,352 gallons of propane was released to the environment via both the leak and controlled flaring.
6. Respondent never submitted a risk management plan ("RMP"), including a registration for the tank, to the Department for the storage and use of propane which was required by no later than June 21, 1999.
7. During a subsequent inspection by the Department on August 4, 2008, the Department observed that cables used to operate the emergency shutoff valves had been removed and the emergency shutoff valves had been wired to remain in a constant open position thereby rendering the safety equipment inoperable. In addition, the tank was situated on an unstable foundation using improper supports.
8. Respondent failed to pay the \$500 annual fee required by 7 Del. C. § 7713 from 1992 to date.

### ***STATUTORY AND REGULATORY REQUIREMENTS***

1. Seven Del. C. § 6003(a)(1) states:

*"No person shall, without first having obtained a permit from the Secretary, undertake any activity in a way which may cause or contribute to the discharge of an air contaminant."*

2. Seven Del. C. § 7704(a) states in part:

*"The General Assembly believes that every person in control of or associated with an EHS is responsible for operating in a manner consistent with the purposes of this chapter. It is their obligation to develop and implement a risk management program that anticipates and minimizes the chances of catastrophic events...Every person in control of or associated with any such substance that is produced, processed, handled or stored has a general duty to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur."*

3. Seven Del. C. § 7708(b) states in part:  
*"...the RMP shall be submitted in a method and format to a State central point as specified by the Department prior to June 21, 1999."*
4. Seven Del. C. § 7709(b) states in part:  
*"All persons with an actual quantity of an EHS that is equal to or exceeds the threshold quantity must implement a risk management program appropriate to the facility risk."*
5. Seven Del. C. § 7713(a) states:  
*"The Department is authorized to charge and collect fees from persons with extremely hazardous substances pursuant to §§ 7707 and 7709 of this title. Fees shall be a minimum of \$500 per year for the first whole unit..."*
6. Seven DE Admin. Code 1102 § 2.1 states in part:  
*"...no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department..."*
7. Seven DE Admin. Code 1201 § 3.1 states in part:  
*"It is the obligation of the owner or operator of stationary sources having regulated substances on-site to operate in a manner consistent with this regulation by developing and implementing a risk management program that anticipates and minimizes the chances of catastrophic events. The stationary source risk management program implementation shall be subject to review by the Department."*
8. Seven DE Admin. Code 1201 § 3.2 states in part:  
*"Every person in control of or associated with any such substances (regulated or not regulated) that is produced, handled, or stored has a general duty to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur."*
9. Seven DE Admin. Code 1201 § 6.1.2 states in part:  
*"Processes with the regulated substance having any potential release quantity equal to or greater than the sufficient quantities as defined in either Section 6.2 Table 4, Section 6.3 Table 5 or Section 6.4 Table 6 and not subject to Section 5.130 [see 6.1.1], shall: implement the Risk Management Programs described in Section 5 for appropriate program level; perform a hazard assessment for the Delaware worst-case as required in 6.5; submit a Risk Management Plan to the Department that complies with 6.6; implement Section 5 Subpart E Emergency*



*Response; implement Section 5.200 Record Keeping; and implement Section 5.15 Management"*

10. Seven DE Admin. Code 1201 § 6.6.1.1 states in part:

*"The owner or operator subject to 6.1.2 shall submit a single Delaware Risk Management Plan that includes the information required by 6.6.2 through 6.6.10 for all covered processes. The Delaware Risk Management Plan shall be submitted on a form provided by the Department to a location specified by the Department prior to June 21, 1999."*

### **CONCLUSIONS**

Based on the above, the Department has concluded that Respondent committed the following violations:

1. Respondent violated 7 Del. C. § 6003(a)(1) by undertaking activities, including without limitation locating its propane tank on an unstable surface and rendering safety equipment on the propane tank inoperable, in a way which caused or contributed to the discharge of approximately 1,352 gallons of propane, an air contaminant, without first obtaining a permit from the Secretary.
2. Respondent violated 7 Del. C. § 7704(a) by failing to meet its obligation to develop and implement a risk management program that anticipated and minimized chances of a catastrophic event associated with the use and storage of propane, an extremely hazardous substance at its facility.
3. Respondent violated 7 Del. C. § 7704(a) by failing to fulfill its general duty to design and maintain a safe facility to prevent releases and minimize the consequences of accidental releases when it located its 30,000 gallon propane tank on an unstable foundation with improper supports and by rendering safety equipment on said tank inoperable which in turn negatively impacted its ability to prevent and minimize the consequences of the release that occurred on July 31, 2008.
4. Respondent violated 7 Del. C. § 7708(b) by failing to submit a risk management plan to the Department.
5. Respondent violated 7 Del. C. § 7709(b) by failing to implement a risk management program appropriate to its facility's risk associated with the storage and use of propane in a quantity that exceeds the threshold quantity.
6. Respondent violated 7 Del. C. § 7713(a) by failing to pay the \$500 annual fee applicable to the storage and use of propane, an extremely hazardous substance, at its facility.

7. Respondent violated 7 DE Admin. Code 1102 § 2.1 by operating its 30,000 gallon propane tank that emitted approximately 1,352 gallons of propane, an air contaminant, prior to receiving approval of a permit application from the Department.
8. Respondent violated 7 DE Admin. Code 1201 § 3.1 by failing to develop and implement a risk management program for the storage and use of propane, a regulated substance, on-site at its facility.
9. Respondent violated 7 DE Admin. Code 1201 § 3.2 by failing to fulfill its general duty to design and maintain a safe facility to prevent releases and minimize the consequences of accidental releases, when it located its 30,000 gallon propane tank on an unstable foundation with improper supports and by rendering safety equipment on said tank inoperable which in turn negatively impacted its ability to prevent and minimize the consequences of the release that occurred on July 31, 2008.
10. Respondent, having a potential release quantity equal to or greater than the sufficient quantity of the regulated substance propane, violated 7 DE Admin. Code 1201 § 6.1.2 by failing to implement the appropriate risk management program; perform a worst-case hazard assessment; submit a risk management plan and implement various Section 5 requirements.
11. Respondent violated 7 DE Admin. Code 1201 § 6.6.1.1 by failing to submit a Delaware Risk Management Plan to the Department.

### ***ASSESSMENT OF PENALTY***

Pursuant to the provisions of 7 *Del. C.* §§ 6005(b)(3) and 7714(b), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$15,000 for the violations identified in this Assessment and Order and costs according to 7 *Del. C.* § 6005(c). Respondent shall submit a check to the Department in the amount of \$15,000 within 30 days from the receipt of this Assessment and Order for the aforementioned penalty. The check shall be made payable to the "State of Delaware" and shall be directed to: David L. Ormond, Jr., Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, Delaware 19904.

### ***ASSESSMENT OF BACK FEES***

Pursuant to the provisions of 7 *Del. C.* § 7713, this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent back fees of \$8,000. Respondent shall submit a check to the Department in the amount of \$8,000 within 30 days from the receipt of this Assessment and Order for the aforementioned back fees. The check shall be made payable to the "State of Delaware" and shall be directed to: David L. Ormond, Jr., Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, Delaware 19904.



## ***PUBLIC HEARING***

This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. §§ 6005(b)(3), 6005(c) and 7714(b)(2). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees. The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

## ***PRE-PAYMENT***

Respondent may prepay the administrative penalty of \$15,000, back fees of \$8,000 and the Department's estimated costs in the amount of \$1,125 in the manner described in the attached waiver. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest the Assessment which shall become a final Order.

If you have any questions, please contact Ellen Malenfant at (302) 739-9404.

Date

4/17/09



David S. Small, Acting Secretary

cc: David L. Ormond, Jr., Deputy Attorney General  
James D. Werner, Director  
Ali Mirzakhali, Program Administrator  
Ellen Malenfant, Program Manager  
Paul Foster, Program Manager  
Joanna French, Program Manager  
Jay Brabson, Engineer  
Richard Antoff, Engineer  
Tom Lilly, Engineer  
Jennifer Bothell, Enforcement Coordinator  
Dawn Minor, Paralegal  
File

## ***WAIVER OF STATUTORY RIGHT TO A HEARING***

**Baltimore Aircoil Company** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Baltimore Aircoil Company** will pay the administrative penalty in the amount of \$15,000 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to David L. Ormond, Jr., Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904; and
2. **Baltimore Aircoil Company** will pay the back fees in the amount of \$8,000, by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to David L. Ormond, Jr., Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904; and
3. **Baltimore Aircoil Company** will reimburse the Department in the amount of \$1,125, which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to David L. Ormond, Jr., Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904.

**Baltimore Aircoil Company**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_